

STATE OF INDIANA ) IN THE MARION CIRCUIT/SUPERIOR COURT  
 ) SS:  
COUNTY OF MARION ) CAUSE NO. **49D 10050 1PL 01554**

STATE OF INDIANA, )

Plaintiff, )

v. )

DEBORAH ARTHUR and )  
ROY SKILES, )

Defendants. )

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**FILED**

JAN 14 2005

*James A. Holler*  
CLERK OF THE  
MARION CIRCUIT COURT

**COMPLAINT FOR INJUNCTION, RESTITUTION,  
COSTS, AND CIVIL PENALTIES**

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Terry Tolliver, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1, *et seq.*, for injunctive relief, consumer restitution, costs, civil penalties, and other relief.

**PARTIES**

1. The Plaintiff, State of Indiana is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5-0.5-4(c).

2. The Defendant, Deborah Arthur, at all times relevant to this complaint, was an individual engaged in the sale of items via the Internet with a principal place of business in Marion County, located at 5902 S. Keystone Avenue, Indianapolis, IN 46227.

3. The Defendant, Roy Skiles, at all times relevant to this complaint, was an individual engaged in the sale of items via the Internet with a principal place of business in Marion County, located at 5902 S. Keystone Avenue, Indianapolis, IN 46227.

4. When, in this Complaint, reference is made to any act of the aforementioned Defendants, whether acting individually, jointly, or severally, such allegations shall be deemed to mean the principals, agents, or employees of the Defendants did or authorized such acts to be done for the benefit of the Defendants while actively engaged in the management, direction, or control of the affairs of said Defendants and while acting within the scope of their duties, employment, or agency.

### **FACTS**

5. At least since May 28, 2004, the Defendants have offered items for sale via the Internet.

#### **A. Allegations related to Consumer Laura Haulum's transaction.**

6. On or about May 28, 2004, the Defendants entered into a contract via the Internet with Laura Haulum ("Haulum") of Lakeland, Tennessee, wherein the Defendants represented they would sell a case of suntan lotion to Haulum for a total price of One Hundred and Fifty Dollars (\$150.00), which Haulum paid.

7. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of sale they would ship the suntan lotion to Haulum within a reasonable period of time.

8. The Defendants have yet to either provide a refund, or to ship the suntan lotion to Haulum.

**B. Allegations related to Consumer Sharon Swanson's transaction.**

9. On or about May 31, 2004, the Defendants entered into a contract via the Internet with Sharon Swanson ("Swanson") of Canyon Lake, California, wherein the Defendants represented they would sell a case of suntan lotion to Swanson for a total price of One Hundred and Twenty-Five Dollars (\$125.00), which Swanson paid.

10. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of sale they would ship the suntan lotion to Swanson within a reasonable period of time.

11. The Defendants have yet to either provide a refund, or to ship the suntan lotion to Swanson.

**C. Allegations related to Consumer Jayme McKenna's transaction.**

12. On or about June 2, 2004, the Defendants entered into a contract via the Internet with Jayme McKenna ("McKenna") of Utica, New York, wherein the Defendants represented they would sell a case of suntan lotion to McKenna for a total price of One Hundred and Ten Dollars (\$110.00), which McKenna paid.

13. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of sale they would ship the suntan lotion to McKenna within a reasonable period of time.

14. While McKenna has received a partial refund of Eighty-Five Dollars (\$85.00) from eBay, the Defendants have yet to either issue a refund of the remaining balance of Twenty-Five Dollars (\$25.00), or to ship the suntan lotion to McKenna.

**D. Allegations related to Consumer Phillip Squires' transaction.**

15. On or about June 4, 2004, the Defendants entered into a contract via the Internet with Phillip Squires ("Squires") of Pensacola, Florida, wherein the Defendants represented they would sell two (2) cases of suntan lotion to Squires for a total price of Two Hundred and Fifty Dollars (\$250.00), which Squires paid.

16. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of sale they would ship the suntan lotion to Squires within a reasonable period of time.

17. While Squires has received a partial refund of One Hundred and Seventy-Five Dollars (\$175.00) from eBay, the Defendants have yet to either issue a refund of the remaining balance of Seventy-Five Dollars (\$75.00), or to ship the suntan lotion to Squires.

**E. Allegations Involving Consumer Bill Siegler.**

18. On or about June 6, 2004, the Defendants entered into a contract via the Internet with Bill Siegler ("Siegler") of Milford, Ohio, wherein the Defendants represented they would sell a case of suntan lotion to Siegler for a total price of One Hundred and Twenty-Five Dollars (\$125.00), which Siegler paid.

19. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of sale they would ship the suntan lotion to Siegler within a reasonable period of time.

20. The Defendants have yet to either provide a refund, or to ship the suntan lotion to Siegler.

**F. Allegations related to Consumer Crystal Hiller's transaction.**

21. On or about June 7, 2004, the Defendants entered into a contract via the Internet with Crystal Hiller ("Hiller") of Friendship, Wisconsin, wherein the Defendants represented they would sell a case of suntan lotion to Hiller for a total price of One Hundred and Eighty-Five Dollars (\$185.00), which Hiller paid.

22. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of sale they would ship the suntan lotion to Hiller within a reasonable period of time.

23. While Squires has received a partial refund of One Hundred and Fifty Dollars (\$150.00) from eBay, the Defendants have yet to either issue a refund of the remaining balance of Thirty-Five Dollars (\$35.00), or to ship the suntan lotion to Hiller.

**COUNT I-VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT**

24. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 23 above.

25. The transactions referred to in paragraphs 6, 9, 12, 15, 18, and 21 are "consumer transactions" as defined by Ind. Code § 24-5-0.5-2(a)(1).

26. The Defendants are "suppliers" as defined by Ind. Code § 24-5-0.5-2(a)(3).

27. The Defendants' representations to consumers that they would sell the represented items to consumers, when the Defendants knew or reasonably should have known that the consumers would not obtain such benefit, as referenced in paragraphs 6, 9, 12, 15, 18, and 21, are violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(1).

28. The Defendants' representations to consumers that the Defendants would deliver the items, or otherwise complete the subject matter of the consumer transaction within a reasonable period of time, when the Defendants knew or reasonably should have known they would not, as referenced in paragraphs 7, 10, 13, 16, 19, and 22, are violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(10).

29. The Defendants' representations to consumers that the consumers would be able to purchase the items advertised by the Defendants, when the Defendants did not intend to sell those items, as referenced in paragraphs 6, 9, 12, 15, 18, and 21, are violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(11).

**COUNT II- KNOWING AND INTENTIONAL VIOLATIONS OF  
THE DECEPTIVE CONSUMER SALES ACT**

30. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 29 above.

31. The misrepresentations and deceptive acts set forth in paragraphs 6, 7, 9, 10, 12, 13, 15, 16, 18, 19, 21, and 22 were committed by the Defendants with knowledge and intent to deceive.

**RELIEF**

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendants, Deborah Arthur and Roy Skiles, for a permanent injunction pursuant to Ind. Code § 24-5-0.5-4(c)(1), enjoining the Defendants from the following:

a. representing, expressly or by implication, the subject of a consumer transaction has sponsorship, approval, characteristics, accessories, uses, or benefits it does not have which the Defendants know or reasonably should know it does not have;

b. representing, expressly or by implication, the Defendants are able to deliver or complete the subject of a consumer transaction within a reasonable period of time, when the Defendants know or reasonably should know they can not; and

c. representing, expressly or by implication, a consumer will be able to purchase the subject of a consumer transaction as advertised by the Defendants, if the Defendants do not intend to sell it.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendants for the following relief:

a. cancellation of the Defendants' unlawful contracts with all aggrieved consumers, including but not limited to the persons identified in paragraphs 6, 9, 12, 15, 18, and 21, pursuant to Ind. Code § 24-5-0.5-4(d);

b. consumer restitution pursuant to Ind. Code § 24-5-0.5-4(c)(2), for reimbursement of all unlawfully obtained funds remitted by all aggrieved consumers for the purchase of the Defendants' items via the Internet, including but not limited to, the persons identified in paragraphs 6, 9, 12, 15, 18, and 21, in an amount to be determined at trial;

c. costs pursuant to Ind. Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;

d. on Count II of the Plaintiff's complaint, civil penalties pursuant to Ind. Code § 24-5-0.5-4(g) for the Defendants' knowing violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana;

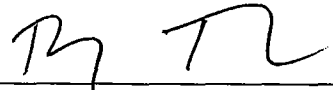
e. on Count II of the Plaintiff's complaint, civil penalties pursuant to Ind. Code § 24-5-0.5-8 for the Defendants' intentional violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana; and

f. all other just and proper relief.

Respectfully submitted,

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By:

  
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